

In lieu of a response to the motion to dismiss, Plaintiff has filed a motion for default judgment. The Court denies that motion for two reasons. First, the Clerk has not entered default against Defendant, a prerequisite to a default judgment under Rule 55. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Second, the Clerk would not enter default against Defendant if Plaintiff were to request it, because Defendant has not defaulted. Plaintiff is wrong that the present Rule 12(b) motion—which is permitted in lieu of an answer, *see* Fed. R. Civ. P. 12(a)(4)—is itself untimely. Although the Amended Complaint was served on September 15,

2014, making October 6, 2014 the last day to answer under Rule 12(a)(1)(A), the Magistrate Judge extended the time to respond to the Amended Complaint through October 27, 2014, and the present Rule 12(b) motion was timely filed on October 24, 2014. Plaintiff, having not timely responded to that motion, has consented to its grant. *See* Local R. 7-2(d).

CONCLUSION

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 19) is GRANTED.

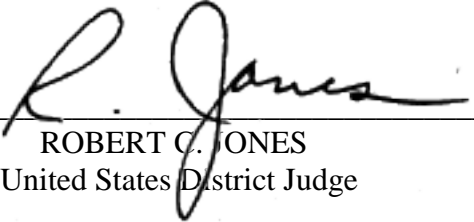
IT IS FURTHER ORDERED that the Motion for Default Judgment (ECF No. 23) is DENIED.

IT IS FURTHER ORDERED that the Motion to Access the Law Library (ECF No. 17) is DENIED as moot.

IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

IT IS SO ORDERED.

Dated this 16th day of December, 2014.



ROBERT C. JONES
United States District Judge